

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31539  
Docket No. CL-31916  
96-3-94-3-219**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Transportation Communications International  
( Union  
PARTIES TO DISPUTE: (  
(Houston Belt and Terminal Railway Company**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Organization that:**

- 1. The Houston Belt & Terminal Railway Company violated the Rules Agreement effective April 15, 1972, as amended, expressly Rule 26 and any associated rules when it dismissed clerical employee Marietta M. Benson investigation held on April 1, 1993 following formal investigation held on April 1, 1993 with such discipline being harsh, excessive, unwarranted, arbitrary, capricious and unjust.**
- 2. The Houston Belt & Terminal Railway Company shall be required to reinstate Ms. Marietta M. Benson to the service of the Houston Belt & Terminal Railway Company with her seniority protected.**
- 3. The Houston Belt & Terminal Railway Company shall be required to pay Ms. Marietta M. Benson for each work day she has missed, commencing on April 2, 1993 and to continue until she is reinstated."**

**FINDINGS:**

**The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.**

**This Division of the Adjustment Board has jurisdiction over the dispute involved herein.**

**Parties to said dispute waived right of appearance at hearing thereon.**

**On January 8, 1993, Claimant, an employee with more than 39 years seniority, pleaded guilty in United States District Court, to one count of mail fraud, a felony. Claimant's guilty plea resulted from charges that, for a period of seven years, she fraudulently cashed checks from the Railroad Retirement Board sent to her deceased mother.**

**On January 30, 1993, Claimant was notified to appear for an Investigation on January 25, 1993, "to develop the facts and place your responsibility, if any, in connection with the alleged report of your conduct unbecoming an employee in that you pled guilty to count four of your Federal indictment (mail fraud) in U.S. District court, Galveston, TX, January 8, 1993, while working as a HB&T clerk." Following several postponements, the Investigation was held on April 1, 1993. Thereafter, Claimant was advised that she was dismissed from service, effective April 2, 1993.**

**The Organization contends that the notice of charges was so vague as to violate the Agreement. The Organization further argues that Carrier failed to prove the charges and that it failed to show that Claimant's conduct, which occurred off duty, harmed Carrier. The Organization also maintains that the penalty of dismissal was excessive.**

**Carrier maintains that Claimant was given a fair hearing and that the charge, not only was proven, but was not disputed. Carrier contends that the offense was one of extreme dishonesty and that this Board has recognized that such acts of dishonesty constitute dismissable offenses.**

**The Board has reviewed the record carefully and has concluded that the Organization's contentions lack merit. The notice advised Claimant of the nature of the charge with considerable specificity. She clearly understood the charge against her and was able to prepare a defense.**

**There was no dispute that Claimant pleaded guilty to mail fraud and that she had defrauded the Railroad Retirement Board for a period extending over seven years. This**

Board has recognized that defrauding the Railroad Retirement Board is a dismissable offense. See Third Division Award 29733.

This is a most unfortunate case. Claimant had over 39 years of service with the Carrier. The record contains her statement detailing severe financial difficulties that may have contributed to her defrauding the Railroad Retirement Board. Our role, however, is not to second guess Carrier's assessment of discipline. We have no authority to grant leniency; grants of leniency are the sole prerogative of the Carrier. Our review of the discipline is limited to determining whether it is arbitrary, capricious or excessive. Despite Claimant's seniority, our precedents make it clear that dismissal for such serious acts of dishonesty is not arbitrary, capricious or excessive. See, e.g., Third Division Awards 29733, 26533. Accordingly, we must deny the claim.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 25th day of July 1996.